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 21 TOWERS, PERRIN, FORSTER & CROSBY, INC.

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23 UNITED STATES DISTRICT COURT

24 NORTHERN DISTRICT OF CALIFORNIA

25 SAN FRANCISCO DIVISION

26 _____)
 27 PRODIANCE CORPORATION,) Case No. CV 08 02824 PJH
 28 Plaintiff,)
 29 vs.) **JOINT CASE MANAGEMENT
 30 STATEMENT: FRCP RULES 16(b),
 31 26(f) AND LOCAL RULE 16-9**
 32) Date: September 11, 2008
 33 TOWERS, PERRIN, FORSTER &) Time: 2:30 p.m.
 34 CROSBY, INC.,) Courtroom: 3, 17th Floor
 35 Defendant.)
 36) Complaint filed: May 6, 2008
 37) Trial Date: None set
 38)
 39)
 40 _____)

41 This Joint Case Management Conference Statement is submitted pursuant to Federal
 42 Rules of Civil Procedure Rules 16(b), 26(f), Local Rule 16-9 and the Court's standing order
 43 effective March 1, 2007 regarding the contents of joint case management conference

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1 statements. The parties, through counsel Vernon H. Granneman of Pillsbury Winthrop
 2 Shaw Pittman LLP, attorneys for Prodiance Corporation (hereinafter "Prodiance"), and
 3 Matthew Kenefick of Jeffer, Mangels, Butler & Marmaro LLP, attorneys for Towers,
 4 Perrin, Forster & Crosby, Inc. (hereinafter "Towers") met and conferred on August 12,
 5 2008 respecting the content of this statement.

6 1. Jurisdiction And Service

7 The parties agree that the Court has subject matter jurisdiction over Plaintiff's
 8 claims as a result of diversity citizenship of the parties. Service is complete and all parties
 9 have appeared.

10 2. Facts

11 This action was originally commenced in the Superior Court of the State of
 12 California, Contra Costa County, by the filing of a complaint by Prodiance on May 6, 2008.
 13 The complaint alleges causes of action for breach of contract and common counts (under
 14 the theories of account stated, work, labor, services and materials, and goods sold and
 15 delivered) and seeks damages of \$205,000 against Defendant Towers. Towers filed its
 16 notice of removal on June 10, 2008.

17 Prodiance contends that Towers entered into a contract to purchase software and
 18 services from Prodiance for a contract price of \$205,000. Prodiance contends the contract
 19 was entered into on or about December 14, 2007 and Prodiance subsequently invoiced
 20 Towers for the majority of amounts due under the contract. Prodiance contends that
 21 Towers breached the contract in or about mid-March 2008 by refusing to complete the
 22 purchase of software and services pursuant to the parties' agreement and by contending that
 23 Towers had never purchased anything from Prodiance.

24 Towers denies any liability to Prodiance. Towers contends that no contract with
 25 Prodiance was ever formed because the alleged contract was nothing more than a term sheet
 26 for products and services to be ordered at a later date and that no such order was ever
 27 placed. In the alternative, Towers contends that even if a contract was formed, then it was
 28 terminated in mid-March 2008 by Towers and Towers would therefore be liable, if at all,

1 for no more than a pro-rated portion of the contract amount. Towers also denies liability
2 for breach of contract and common counts on the basis that it received nothing of value
3 from Prodiance.

4 3. Legal Issues

5 The legal issues in this matter include: (1) whether a contract was formed between
6 the parties; (2) if a contract was formed, then whether Towers terminated the contract; and
7 (3) whether any benefit was conferred on Towers by Prodiance under the contract or
8 otherwise.

9 4. Motions

10 There are no prior or pending motions. The parties anticipate that they may file
11 motions for partial or total summary judgment.

12 5. Amendment Of Pleadings

13 No amendments to pleadings are anticipated at this time; however, the parties
14 suggest December 19, 2008 as the deadline for amendment of pleadings.

15 6. Evidence Preservation

16 Both parties have taken reasonable steps to preserve evidence relevant to the issues
17 reasonably evident in this action.

18 7. Disclosures

19 The parties have engaged in an informal exchange of documents that focus
20 primarily on the contract claims and defenses. The parties expect to complete initial
21 disclosures under FRCP Rule 26 on or before September 4, 2008.

22 8. Discovery

23 The parties have already engaged in an information exchange of documents. No
24 other discovery has been conducted. The parties propose the following discovery plan:

25 February 16, 2009 Percipient discovery to be completed

26 March 31, 2009 Exchange of expert disclosures and reports

27 April 30, 2009 Exchange of expert rebuttal disclosures and reports

28 May 29, 2009 Close of discovery

1 July 15, 2009 Last day to hear pretrial (including dispositive) motions
2 The parties agree that each side will have the right to take 5 depositions. Additional
3 depositions may be taken with leave of Court for good cause shown. The duration of
4 depositions shall be in accordance with FRCP Rule 30. Standard Rules of Federal
5 Procedure shall otherwise apply for interrogatories, requests for admission and requests to
6 produce documents or other tangible things.

7 9. Class Actions

8 Not applicable.

9 10. Related Cases

10 None.

11 11. Relief

12 Plaintiff seeks recovery of the contract amount of \$205,000 as described in the
13 complaint, together with interest, attorneys fees and litigation costs. To the extent that
14 Plaintiff's lost profits become an issue in the case, Plaintiff expects that would be the
15 subject of expert testimony and has not engaged an expert for that purpose of calculating
16 lost profit damages at this point. Defendant seeks recovery of its attorneys' fees and
17 litigation costs.

18 12. Settlement And ADR

19 The parties, through counsel, have had preliminary discussions respecting
20 settlement and have filed an ADR stipulation which has been approved by the Court.

21 13. Consent To Magistrate Judge For All Purposes

22 The parties do not consent to assignment of this case to a Magistrate Judge for all
23 purposes.

24 14. Other References

25 None.

26 15. Narrowing Of Issues

27 Counsel have had discussions about the possibility of narrowing issues. Counsel
28 have no specific suggestions for the narrowing of issues at this time.

1 16. Expedited Schedule

2 The parties do not have an agreement on an expedited schedule. Given the amount
 3 in controversy, Prodiance is willing to abide by any reasonable procedures to maximize the
 4 efficiency of litigating this matter.

5 17. Scheduling

6 Proposed dates for designation of experts and discovery cut-off are set forth above.
 7 The parties suggest that the pretrial conference be scheduled for mid-August 2009 with trial
 8 to follow in mid-September 2009.

9 18. Trial

10 Both sides have requested a jury and expect the trial to take 3-5 days.

11 19. Disclosure Of Non-Party Interested Entities Or Persons

12 Each party has filed a Certificate of Interested Entities or Persons required by Civil
 13 Local Rule 3-16. Pursuant to Civil Local Rule 3-16, the parties certified that other than the
 14 named parties there is no such interest to report.

15 20. Other Matters

16 None.

17 Dated: September 4, 2008.

PILLSBURY WINTHROP SHAW PITTMAN LLP

18 By /s/ Vernon H. Granneman

19 Vernon H. Granneman
 20 Attorneys for Plaintiff
 PRODIANCE CORPORATION

21 Dated: September 4, 2008.

JEFFER, MANGELS, BUTLER & MARMARO LLP

22 By /s/ Matthew S. Kenefick

23 Matthew S. Kenefick
 24 Attorneys for Defendant
 TOWERS, PERRIN, FORSTER & CROSBY,
 INC.

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26 I attest that I have concurrence from Matthew S. Kenefick to efile this document.

27 /s/ Vernon H. Granneman

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